

ORDER NO. 3320

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Competitive Product Prices
Priority Mail Express Contract 25 (MC2015-22)
Negotiated Service Agreement

Docket No. CP2015-28

ORDER APPROVING AMENDMENT TO
PRIORITY MAIL EXPRESS NEGOTIATED SERVICE AGREEMENT

(Issued May 26, 2016)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail Express negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Amendment.

¹ Notice of United States Postal Service of Amendment to Priority Mail Express Contract 25, with Portions Filed Under Seal, April 29, 2016 (Notice). The amendment is an attachment to the Notice (Amendment).

In Order No. 2318, the Commission approved the Priority Mail Express Contract 25 negotiated service agreement (Existing Agreement).² On April 29, 2016, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. Notice at 1. On May 2, 2016, the Commission issued an order reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

On May 11, 2016, Chairman's Information Request No. 1 was issued to clarify the Postal Service's Notice and directed the Postal Service to respond by May 17, 2016.⁴ CHIR No. 1 sought confirmation of the Postal Service's calculation of delivery costs in the financial model. The Postal Service filed a timely response to CHIR No. 1.⁵

On May 19, 2016, Chairman's Information Request No. 2 was issued to clarify the Postal Service's Response to CHIR No. 1 and directed the Postal Service to respond by May 25, 2016.⁶ CHIR No. 2 sought further information regarding the Postal Service's calculation of costs in the financial model. The Postal Service filed a timely response to CHIR No. 2.⁷

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service filed supporting financial documentation and a certified statement, as required by 39 C.F.R. § 3015.5. *Id.* The Postal Service asserts that the Amendment

² See Docket Nos. MC2015-22 and CP2015-28, Order Adding Priority Mail Express Contract 25 to the Competitive Product List, January 9, 2015 (Order No. 2318).

³ Order No. 3269, Notice and Order Concerning Amendment to a Priority Mail Express Negotiated Service Agreement, May 2, 2016.

⁴ Chairman's Information Request No. 1 and Notice of Filing Under Seal, May 11, 2016 (CHIR No. 1).

⁵ Responses of United States Postal Service to Chairman's Information Request No. 1, with Portions Filed Under Seal, May 17, 2016 (Response to CHIR No. 1).

⁶ Chairman's Information Request No. 2 and Notice of Filing Under Seal, May 19, 2016 (CHIR No. 2).

⁷ Responses of United States Postal Service to Chairman's Information Request No. 2, Filed Under Seal, May 25, 2016 (Response to CHIR No. 2).

will not impair the ability of the contract to comply with 39 U.S.C. § 3633. *Id.*
Attachment B.

II. COMMENTS

Comments were filed by the Public Representative.⁸ No other person submitted comments. The Public Representative reviewed the Amendment, the Existing Agreement, and the financial model filed under seal. PR Comments at 2. Based on that review, she concludes that the Existing Agreement, as amended, should continue to generate sufficient revenue to cover costs and satisfy 39 U.S.C. § 3633(a). *Id.*

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, the comments filed by the Public Representative, the Response to CHIR No. 1, and the Response to CHIR No. 2.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Amendment changes the prices under Priority Mail Express Contract 25 and the method by which the prices are calculated. The Commission finds the methodology

⁸ Public Representative Comments on Postal Service Notice of Amendment to Priority Mail Express Negotiated Service Agreement, May 9, 2016 (PR Comments).

change acceptable after reviewing the Postal Service's Response to CHIR No. 1 and Response to CHIR No. 2.

Based on a review of the record, the Commission finds that the Existing Agreement, as amended, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the amended agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). *See also* 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the Amendment indicates it is consistent with section 3633(a). The annual rate adjustment provision in section I.G. of the amended agreement should allow the amended agreement's revenue to cover costs for the duration of its term. The Commission will continue to review the cost coverage of the amended agreement in its Annual Compliance Determination to ensure that rates cover costs.

Other considerations. The Postal Service states that the Amendment shall become effective one business day after the date that the Commission completes its review. Notice at 1. The Existing Agreement, as amended, is set to expire three years after the initial effective date unless, among other things, either party terminates the contract with 30 days' written notice to the other party or it is renewed by mutual agreement.⁹

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

⁹ Docket Nos. MC2015-22 and CP2015-28, Request of the United States Postal Service to Add Priority Mail Express Contract 25 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 22, 2014, Attachment B at 2-3. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Express Contract 25 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble
Secretary